

RECEIVED

DEC 26 2012

A201200113660

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

10/19/2012 1:46 PM
JULIE L. VOORHIES
MARION COUNTY IN RECORDER
FEE: \$ 59.00
PAGES: 14
By: DW

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is executed this 2nd day of October, 2012, by Stewart Warner Corporation, a Virginia Corporation (together with its successors and assigns, collectively referred to herein as "Stewart Warner").

Recitals

A. Stewart Warner owns certain property in Marion County, Indiana, which is more particularly described in "Exhibit A" attached hereto ("the Real Estate"). The Real Estate was acquired by Stewart Warner by Deed recorded on December 31, 1938, in Deed Record 1004, pages 547-549, as Instrument Record Number 44005, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately twenty (20) acres. A map of the Real Estate is included in the attached "Exhibit B."

B. Stewart Warner and its predecessors historically utilized the Real Estate for a variety of manufacturing activities. The Real Estate has been the subject of environmental investigation and remediation efforts pursuant to the "RCRA Corrective Action program" administered by the U.S. Environmental Protection Agency ("EPA"). On July 31, 2008, EPA issued its "Final Decision" document that describes the corrective action that Stewart Warner must perform to satisfy its corrective action obligations. By letter dated July 30, 2009, EPA approved Stewart Warner's "Corrective Measures Report and Work Plan" (the "CMI Work Plan") which provides additional detail as to the work to be performed. On August 16, 2012, EPA approved "Addendum 1" to the CMI Work Plan. As of the date of the recording of this Covenant, the work required to be performed by these approval documents is ongoing.

C. Once this corrective action work is completed, various contaminants from historical manufacturing operations ("Constituents of Concern") will be left in soil and groundwater at the Real Estate above levels that EPA considers appropriate for residential development or other unrestricted uses. As a result, this Covenant imposes certain restrictions on use of the Real Estate to ensure continued protection of human health and the environment. The Constituents of Concern that are being addressed by the corrective measures are listed in Exhibit C attached hereto.

D. Documents relating to the corrective action work described above, including EPA's Final Decision, the approved CMI Work Plan, and Addendum 1, may be examined at EPA's Region 5 Public File Room at 77 West Jackson Boulevard, Chicago, IL 60604. The Final Decision (and related site documents) may also be viewed at the Indiana Department of Environmental Management's office, located in the Indiana Government Center North, 100 N. Senate Ave., Indianapolis, Indiana, and may also be available electronically through IDEM's web site (currently located at www.idem.in.gov) by searching IDEM's Virtual File Cabinet.

RECEIVED
MARION COUNTY IN RECORDER
DEC 26 2012

944 - 511840

511840

RECEIVED
MARION COUNTY IN RECORDER
DEC 26 2012

14

Definitions

"Owner" means at any given time the then current title holder of fee simple title to the Real Estate or any portion thereof.

"EPA" means the U.S. Environmental Protection Agency, its successor entities, and those persons or entities acting on its behalf.

"IDEM" means the Indiana Department of Environmental Management, its successor entities, and those persons or entities acting on its behalf.

"Stewart Warner" means Stewart Warner, a Virginia corporation, and its successors by merger, purchase, consolidation or otherwise of all or substantially all of its business and assets.

Restrictions

NOW, THEREFORE, Stewart Warner covenants and declares that the Real Estate is subject to the following restrictions and provisions and intends and declares that said restrictions and covenants shall run with the land and be binding upon each Owner and each of the Related Parties (as hereafter defined).

1. Restrictions: Unless modified or terminated pursuant to paragraph 4 below, the following land use and activity restrictions shall hereafter apply to the Real Estate:
 - (a) The Real Estate shall not be used for any residential purpose including, but not limited to, residences, hotels or motels, hospitals or in-patient medical care, playgrounds or recreational facilities, or daily care facilities (e.g., daycare centers, schools, senior citizen facilities, nursing homes, or assisted living facilities).
 - (b) There shall be no construction of wells or other devices on the Real Estate to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are part of an environmental investigation or a corrective action activity on the Real Estate.
 - (c) The areas depicted and legally described in Exhibit D hereto as the "Limits of Engineered Surface Barriers" are covered with non-native soil (e.g., asphalt, concrete, crushed stone). These "Surface Barriers" serve as an engineered control to prevent direct contact with underlying soils. The Owner shall annually inspect these Surface Barriers and ensure the underlying native soils remain covered. If any person, including any Owner, excavates or otherwise disturbs the integrity of these engineered barriers, such person shall repair and replace the barrier in at least as good a condition as existed prior to such disturbance.
 - (d) There shall be no interference with Stewart Warner's active remediation systems on the Real Estate without the prior approval of EPA. The

locations of the remediation systems are depicted on the "Map of Monitoring Wells" located at Exhibit E.

- (e) Before the construction of new buildings on the Real Estate, the then-current Owner of the Real Estate shall perform the following:
 - (i) Confirm that there is no unacceptable exposure risk resulting from vapor migration of Constituents of Concern from subsurface soil or groundwater. Such analysis shall be presented to EPA for its review and approval in accordance with then-applicable law or guidance.
 - (ii) If unacceptable exposure risks are determined by EPA to exist following its review of the investigation report described in ¶1.e.(i) immediately above, the then-current Owner shall either install, operate and maintain a vapor mitigation system (consistent with U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment, EPA 542-R-08-001, March 2008, or other appropriate and applicable guidance or regulation) or conduct an additional remedial action to eliminate those exposure risks; or
 - (iii) In lieu of performing the investigation described in ¶1.e.(i) above, the then-current Owner may instead proceed to install, operate and maintain the vapor mitigation system described in ¶1.e.(ii) above.
 - (f) Any soil excavation on the Real Estate must be performed in accordance with a soil excavation, testing, and management plan, as well as a health and safety plan, that comply with all applicable state, federal and local laws. Nothing herein shall limit or conflict with any other legal requirements regarding construction methods and techniques that must be used to minimize risk of exposure while conducting work in contaminated areas.
2. Effect of Covenant: Stewart Warner intends and declares that any future conveyance of the Real Estate will be subject to this Covenant and that this Covenant shall run with the Real Estate and shall be binding on the current and all future Owners of the Real Estate and their respective successors, assigns, parents, affiliates, employees, contractors, mortgagees, representatives, agents, lessees, licensees, invitees, guests, and any other person acting under their direction or control (individually, a "Related Party" and collectively, "Related Parties"). No transfer, mortgage, lease, license, easement or other conveyance of any interest or right to occupancy in all or any part of the Real Estate shall affect the restrictions set forth herein. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above, and with the other terms of this Covenant.

3. Access: Any Owner consents to Stewart Warner, EPA and IDEM and their designated representatives having the right to enter the Real Estate at any reasonable time for the purpose of determining and monitoring compliance with the terms of the Final Decision, CMI Work Plan, Addendum 1, and this Covenant. This includes the right to take samples and inspect records. This right of access also includes the right for Stewart Warner to perform any actions necessary to maintain compliance with the Final Decision, CMI Work Plan, and Addendum 1.
4. Termination and Modification: This Covenant shall only be modified or terminated with the written approval of EPA and Stewart Warner (without regard to whether or not Stewart Warner is the then-current Owner) in consultation with IDEM. Any request to terminate this Covenant, or to modify the restrictions herein, must be submitted in writing concurrently to EPA, IDEM and Stewart Warner at the addresses provided in paragraph 7 below by the Owner of the Real Estate at the time of the proposed termination or modification. If EPA and Stewart Warner approve the request, the Owner of the Real Estate shall record any such approved termination or modification in the Marion County, Indiana Recorder's Office within thirty (30) days of EPA's written approval and shall provide a copy of such recorded termination or modification to EPA, IDEM and Stewart Warner.
5. Notice for Future Conveyances: Any instrument conveying any interest in any portion of the Real Estate, whether voluntary or involuntary, shall include the following notice:
- NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE
COVENANT, DATED _____ 2012, RECORDED IN
THE OFFICE OF THE RECORDER OF MARION COUNTY
ON _____, 2012, INSTRUMENT NUMBER (or other
identifying reference) IN FAVOR OF AND ENFORCEABLE
BY U.S. ENVIRONMENTAL PROTECTION AGENCY, THE
INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT, AND STEWART WARNER
CORPORATION.**
6. Notice of Future Conveyance: Any Owner agrees to provide notice to EPA at least twenty-one (21) days prior to any conveyance of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Such notice shall include the proposed conveyance document which sets forth the restrictions in paragraph 1 above. Within thirty (30) days after the Owner's receipt of the instrument of conveyance, Owner must provide the EPA, IDEM and Stewart Warner with a certified copy of the instrument conveying any interest in any portion of the Real Estate and, if the conveying instrument has been recorded, its recording reference. Such notice shall also include the name and business address of the transferee.

7. Notices: All notices and other communications made hereunder shall be in writing, shall be deemed to have been duly given on the date of delivery if delivered in person or the following day after being sent by overnight delivery by a nationally recognized overnight delivery service such as UPS or Federal Express, or three (3) business days after being mailed by U.S. certified mail (return receipt requested), and shall be addressed as follows (or to such other address as one of the following may advise by notice as provided herein):

To EPA:

U. S. Environmental Protection Agency—Region 5
Attn: Director, Land and Chemicals Division
77 West Jackson Boulevard
Chicago, Illinois 60604

To Stewart Warner:

Paul Ahearn
Director, Environmental Affairs
Stewart Warner Corporation
33 Commercial Street, B52-2K
Foxboro, Massachusetts 02035

With a copy to:

John M. Kyle III
Mindy Boehr
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535

To IDEM:

IDEM, Office of Land Quality
IGCN-Suite 1154
100 North Senate Avenue, Mail Code 65-45
Indianapolis, Indiana 46204-2251

In addition to sending notice to the persons above, all notices required by this Covenant to be sent to Stewart Warner or the then-current Owner shall also be sent to its Registered Agent of record for the State of Indiana, if any, in accordance with the records of the Indiana Secretary of State.

8. Effect of Laws: In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, or policies for environmental restrictive covenants or institutional or engineering controls change.
9. Enforcement: Stewart Warner, on behalf of itself and its successors in title, intends and agrees that IDEM, pursuant to IND. CODE § 13-14-2-6 and also as a third party beneficiary, and EPA, as a third party beneficiary, are entitled to enforce the restrictions and covenants in this Covenant by specific performance or other legal action in a court of competent jurisdiction against Stewart Warner and subsequent holders of a property interest in all or part of the Real Estate. All remedies available hereunder shall be in addition to any and all other remedies at law or equity. Stewart Warner shall have the right to enforce the provisions and restrictions set forth in this Covenant. Damages alone are insufficient to compensate Stewart Warner if any subsequent Owner of the Real Estate or its

Related Parties breaches this Covenant or otherwise defaults hereunder. As a result, if any Owner of the Real Estate, or any Owner's Related Parties, breaches this Covenant or otherwise defaults hereunder, Stewart Warner shall have the right to demand and obtain specific performance and/or immediate injunctive relief to enforce this Covenant in addition to and other remedies it may have at law or at equity.

10. Non-waiver: No failure on the part of Stewart Warner, EPA, or IDEM at any time to require performance by any Owner of the Real Estate, or by any Owner's Related Party, of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect Stewart Warner's, EPA's or IDEM's rights to enforce such term, and no waiver on the part of Stewart Warner, EPA, or IDEM of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
11. Attorney's Fees: If any action is instituted by Stewart Warner seeking to enforce this Covenant, Stewart Warner shall also be entitled to recover (a) its reasonable attorneys' fees in such action, and on any appeal from any judgment or decree entered therein; (b) fees it incurred in connection with such action for the services of consultants, engineers, contractors, experts, and laboratories; and (c) all other costs it incurred in connection with enforcing this Covenant.
12. Indemnification: By virtue of taking title to the Real Estate, any Owner of the Real Estate agrees to indemnify and hold harmless Stewart Warner from and against (a) any and all claims, judgments, damages, (including, without limitation, punitive damages), causes of action, liens, expenses, costs, fees (including, for the services of attorneys, consultants, engineers, contractors, experts, laboratories), penalties, liabilities and fines (collectively "Losses") arising from any default in the performance of any obligation to be performed under the terms of this Covenant or any breach of the restrictions and covenants contained herein by such Owner or its Related Parties; and (b) any and all Losses incurred by Stewart Warner arising from any use of or activity upon the Real Estate that is prohibited by paragraph 1 of this Covenant, or (c) any and all Losses incurred by Stewart Warner in enforcing this Covenant or in defending any action or proceeding brought thereon. If any action or proceeding is brought against Stewart Warner, by reason of the foregoing, the then-current Owner of the Real Estate, upon notice from Stewart Warner, shall defend the same at the Owner's expense by counsel approved by Stewart Warner.. This indemnity shall survive any termination of this Covenant or any part thereof.
13. Non-admission: Nothing herein shall be construed as an admission by Stewart Warner of any liability with respect to the environmental conditions of the Real Estate, or an affirmative obligation by Stewart Warner to remediate the Real Estate.
14. Indiana Law: This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

15. Severability: If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

The undersigned person executing this Covenant on behalf of Stewart Warner represents and certifies that he/she is duly authorized, and has been fully empowered to execute and record this Covenant on behalf of Stewart Warner as the current owner.

IN WITNESS WHEREOF, Stewart Warner, the said owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on the 2nd day of October, 2012.

Stewart Warner Corporation,
a Virginia Corporation

By: Jay S. Ehle
Signature

Name: JAY S. EHLE

Title: PRESIDENT

STATE OF Massachusetts
COUNTY OF Norfolk) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jay S. Ehlke, the President of Stewart Warner Corporation, a Virginia corporation, who acknowledged the execution of the foregoing Environmental Restrictive Covenant for and on behalf of said entity.

Witness my hand and Notarial Seal this 9th day of October, 2012.

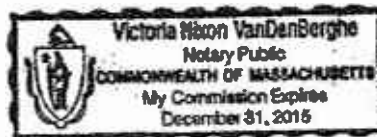
Victoria N. VanDerBerghe
(Signature)

Victoria N. VanDerBerghe
(Printed Name)

Notary Public

Residing in MA County, Norfolk

My Commission Expires:
December 31, 2015



This instrument prepared by David R. Warshauer, Barnes & Thornburg, LLP, 11 South Meridian Street, Indianapolis, Indiana, 46204.

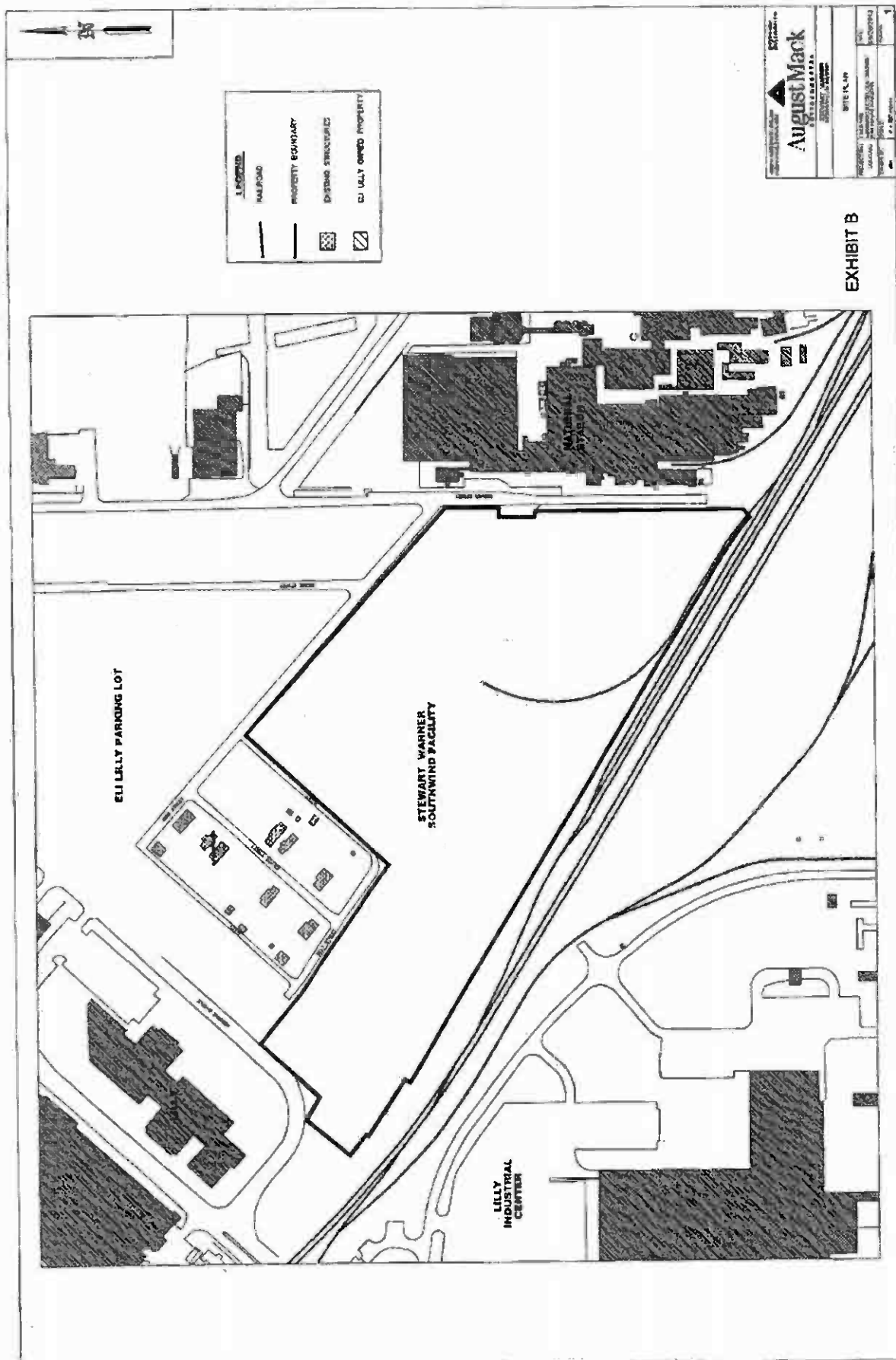
I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law. David R. Warshauer

EXHIBIT A

Legal Description of the Real Estate

Part of the North East Quarter of Section 15, and Part of the North West Quarter of Section 14, all in Township 15 North, Range 3 East of the second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning on the Southeast corner of York Street and the first alley East of Silver Avenue; thence Southeast in and along the Southeast line of York Street 744.3 feet to the West line of Drover Street; thence South in and along the East line of Drover Street 775 feet to the North line of the Indianapolis Belt Railroad; thence North $58^{\circ} 28'$ West in and along the North line of said Railroad 1415.32 feet to a point; thence continuing in and along the North line of said Railroad the same being a curve having a radius of 2814.93 feet; a distance of 443.38 feet to a point in the center line of Nordyke Avenue extended; thence Northeast in and along the center line of Nordyke Avenue, 148.6 feet to a point in the Southwest line of Stock Street extended; thence Southeast in and along the Southwest line of Stock Street extended 30 feet to a point in the East line of Nordyke Avenue; thence Northeast in and along the Southeast line of Nordyke Avenue 205.1 feet to the Southeast corner of Nordyke Avenue and Belt Street; thence Southeast in and along the Southwest line of Belt Street 170 feet to a point; thence South 56° East continuing in and along the Southwest line of Belt Street 372.7 feet to the Southeast corner of Belt Street and the first alley East of Silver Avenue; thence Northeast in and along the Southeast line of the first alley East of Silver Avenue, 472.2 feet to the place of beginning, containing 20.95 acres, more or less. (The above described tract includes Block lettered H in McCarty's 3rd West Side Addition to the city of Indianapolis, as per plat thereof, recorded in Plat Book 8, page 92 in the Office of the Recorder of Marion County, Indiana, also a strip of ground of the uniform width of 30 feet Northwest of and adjoining part of Block lettered H being the Southeast half of that part of Nordyke Avenue vacated.)



LEGEND

— PROPERTY BOUNDARY

— EXISTING STRUCTURES

▨ ELI LILLY OWNED PROPERTY

August Mack ENGINEERS & ARCHITECTS	
PROJECT: STADIUM	
DATE: 10/1/00	
DESIGNED BY: [Signature]	CHECKED BY: [Signature]
DRAWN BY: [Signature]	SCALE: 1" = 100'
SHEET NO. 1	

EXHIBIT B

EXHIBIT C

Stewart Warner Corporation Indianapolis, Indiana Constituents of Concern

The Constituents of Concern at the Stewart Warner Corporation ("Stewart Warner") site are the following:

- Soil
 - VOCs: perchloroethylene (PCE), trichloroethene (TCE), cis-1,2-dichloroethene (cis-1,2-DCE), vinyl chloride, and 1,1,2,2-tetrachloroethane.
 - Metals: arsenic, chromium, and lead
- Groundwater
 - VOCs: PCE, TCE, and vinyl chloride.

Based on the investigation effort, the principle Constituents of Concern (COCs) at the site determined to be addressed were PCE and TCE. These constituents are identified in both soil and groundwater in the western portion of the site, and the presence of these constituents is consistent with the location of known historical degreasing operations.



Maple Park Harmon

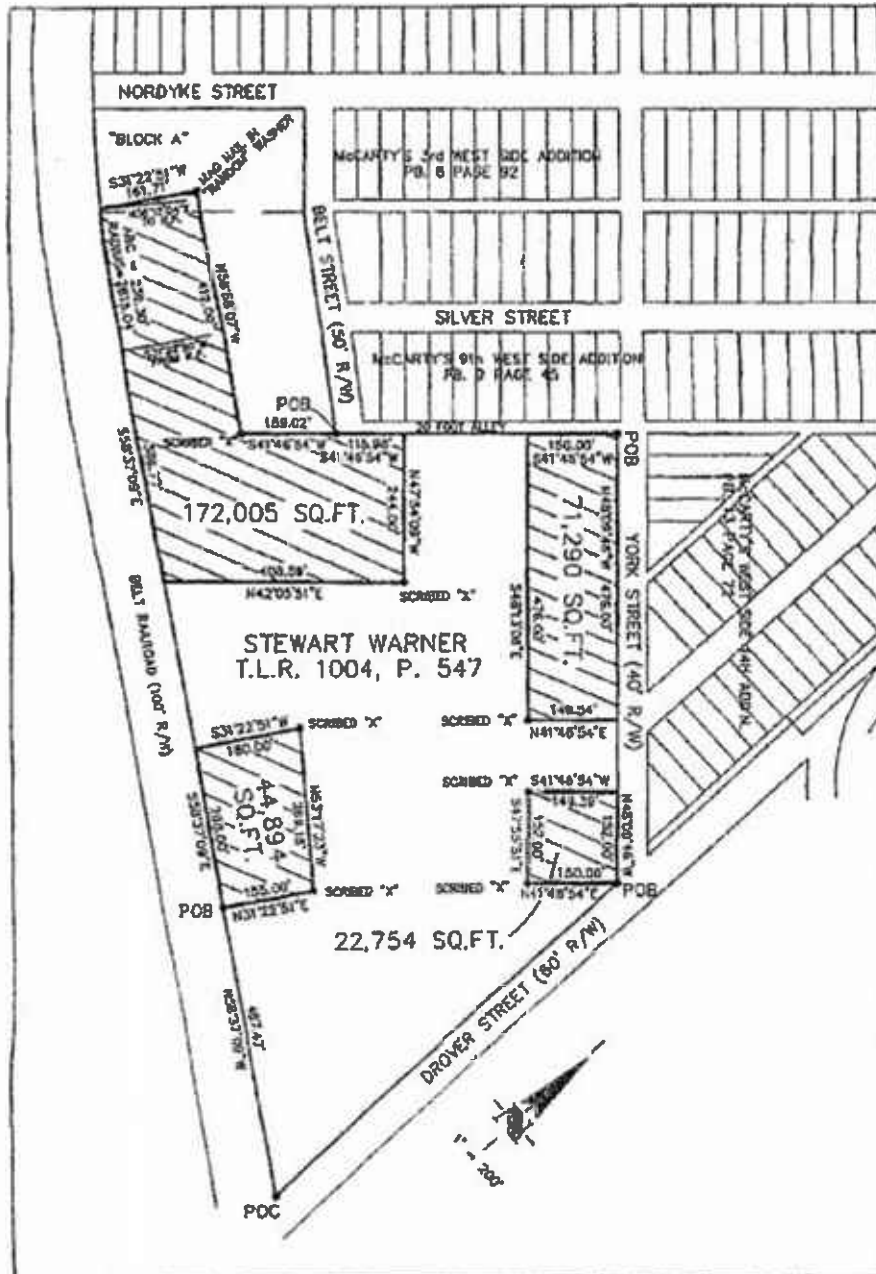
8501 Oak Avenue

Indianapolis, IN 46218-1007

The Schneider Corporation

Phone: 317.826.7100

Fax: 317.826.7200



ENVIRONMENTAL RESTRICTIVE COVENANT EXHIBIT D
LIMITS OF ENGINEERED SURFACE BARRIERS
(FOUR HATCHED AREAS DEPICTED ABOVE)

SHEET 1 OF 2

www.aerialphoto.com



The Schneider Corporation

Historic Post Horizon 8801 Old Avenue Indianapolis, IN 46216-1087 Phone: 317.838.1100 Fax: 317.838.7200

172,065 Square Foot Area

Part of the Northeast Quarter of Section 15, Township 15 North, Range 3 East of the Second Principal Meridian and part of Block A in McCarty's 3rd West Side Addition per plat named recorded in Plat Book 8, Page 82 in the Office of the Marion County Recorder, all in Marion County Indiana and being described as follows:

Beginning at the intersection of the southwesterly line of the 50 foot right of way of Bell Street with the southwesterly right of way line of the first 20 foot alley lying southeast of and parallel with Silver Street all per plat of McCarty's 3rd West Side Addition as recorded in Plat Book 8, Page 45; thence bearing South 41 degrees 46 minutes 54 seconds West (basis of bearings is Indiana State Plane Coordinate System, East Zone) along the southwesterly extension of said alley right of way line a distance of 159.02 feet; thence North 68 degrees 50 minutes 09 seconds West a distance of 472.00 feet; thence South 31 degrees 22 minutes 51 seconds West a distance of 161.71 feet to a point on the northeasterly line of the 100 foot right of way of the former Bell Railroad, said point being on a curve having a radius of 2815.04 feet, the radius point of which bears North 36 degrees 15 minutes 04 seconds East; thence southeasterly along said right of way line and along said curve an arc distance of 238.30 feet to the point of tangency thereof bearing South 31 degrees 22 minutes 50 seconds West from the radius point; thence South 58 degrees 37 minutes 09 seconds East continuing along said right of way line a distance of 386.77 feet; thence North 42 degrees 05 minutes 54 seconds East a distance of 406.58 feet; thence North 47 degrees 54 minutes 00 seconds West a distance of 244.00 feet to the southeasterly right of way line of the streets 20 foot alley; thence South 41 degrees 46 minutes 54 seconds West along said right of way line a distance of 115.88 feet to the Point of Beginning. Containing 172,065 square feet.

71,290 Square Foot Area

Part of the Northeast Quarter of Section 15, Township 15 North, Range 3 East of the Second Principal Meridian in Marion County Indiana being described as follows:

Beginning at the intersection of the southwesterly line of the 40 foot right of way of York Street with the southwesterly right of way line of the first 20 foot alley lying southeast of and parallel with Silver Street all per plat of McCarty's 3rd West Side Addition (recorded in Plat Book 8, Page 45 in the Office of the Marion County Recorder); thence bearing South 41 degrees 46 minutes 54 seconds West (basis of bearings is Indiana State Plane Coordinate System, East Zone) along said alley right of way line a distance of 153.00 feet; thence South 48 degrees 13 minutes 06 seconds East a distance of 475.00 feet; thence North 41 degrees 48 minutes 54 seconds East a distance of 148.54 feet to the southeasterly right of way line of York Street; thence North 48 degrees 00 minutes 45 seconds West along said right of way line a distance of 476.00 feet to the Point of Beginning. Containing 71,290 square feet.

22,754 Square Foot Area

Part of the Northeast Quarter of Section 15, Township 15 North, Range 3 East of the Second Principal Meridian in Marion County Indiana being described as follows:

Beginning at the intersection of the southwesterly line of the 40 foot right of way of York Street with the westerly line of the 60 foot right of way of Drover Street all per plat of McCarty's 14th West Side Addition (recorded in Plat Book 13, Page 72 in the Office of the Marion County Recorder); thence bearing North 41 degrees 46 minutes 54 seconds West (basis of bearings is Indiana State Plane Coordinate System, East Zone) along said York Street right of way line a distance of 152.00 feet; thence South 41 degrees 48 minutes 54 seconds West a distance of 148.39 feet; thence South 47 degrees 55 minutes 51 seconds East a distance of 152.00 feet; thence North 41 degrees 46 minutes 54 seconds East a distance of 156.00 feet to the Point of Beginning. Containing 22,754 square feet.

44,894 Square Foot Area

Part of the Northeast Quarter of Section 15, Township 15 North, Range 3 East of the Second Principal Meridian in Marion County Indiana being described as follows:

Commencing at the intersection of the west line of the 50 foot right of way of Drover Street with the northeasterly line of the 100 foot right of way of the former Bell Railroad; thence North 58 degrees 37 minutes 09 seconds West along said railroad right of way line a distance of 487.47 feet to the Point of Beginning; thence North 31 degrees 22 minutes 51 seconds East a distance of 165.00 feet; thence North 63 degrees 17 minutes 23 seconds West a distance of 269.16 feet; thence South 31 degrees 22 minutes 51 seconds West a distance of 180.00 feet to the northeasterly railroad right of way line; thence South 58 degrees 37 minutes 09 seconds East along said right of way line a distance of 358.00 feet to the Point of Beginning. Containing 44,894 square feet.

Note: The within descriptions were prepared based on calculations provided by agents of the client together with information from extensive previous survey work in the area, and are not the product of a boundary survey of the described real estate. This drawing is not intended to be represented as a retracement or original boundary survey, a route survey, or a Surveyor Location Report.


Gary R. Kent, L.S.
Registered Land Surveyor #80088
July 25, 2011



ENVIRONMENTAL RESTRICTIVE COVENANT EXHIBIT D
LIMITS OF ENGINEERED SURFACE BARRIERS

